

ATTACHMENT A

Remarks

Claim 9 has been canceled in order to expedite the prosecution. Although it is believed that this claim is patentable for the reasons set forth below and in previous responses, this point is now moot with the cancellation of the claim.

Claims 1, 2, 3, 4, 9 and 11 have been rejected under 35 USC 103(a) as being unpatentable over Jiang in view of the newly cited Van Leeuwen patent. Claims 7, 13 and 18-21 have been rejected under 35 USC 103(a) as being unpatentable over Jiang in view of Van Leeuwen and further in view of Pyhalammi. Finally, claims 15 and 16 have been rejected under 35 USC 103(a) as being unpatentable over Jiang in view of Van Leeuwen in view of Pyhalammi and further in view of Lightner. These rejections are respectfully traversed, although as indicated above, claim 9 has been canceled.

In rejecting the claims listed above the Examiner has previously admitted that "Jiang did not explicitly state executing an additional information transfer completed within the remaining time period." The Examiner, however, contends that the Jiang "system tracks the time period during which communications can be made as well as the time it takes to transfer a first content" and thus that "the system clearly maintains the remaining time period, simply the difference."

It is again respectfully submitted that the Examiner is reading more into the Jiang patent than is actually disclosed therein. It is agreed that the Jiang patent is concerned with ensuring that information is transmitted during a predicted time period. However, there appears to be no specific teaching in Jiang of tracking the remaining time after a first transmittal and, more importantly, no teaching of executing an additional information transfer during the remaining time period determined by such tracking. In this regard, in the passages to which the Examiner has made reference, there is no disclosure in Jiang that the Jiang system does not simply transfer as much data (e.g., all of the day's news stories) as it can within the ten minute time period for data transfer. With respect to motivation, it is agreed that this feature of the present invention is a

desirable one, but this does not render the feature obvious. In fact, it is respectfully submitted that the opposite is true given the actual teachings of Jiang.

Of course, the Examiner uses the Van Leeuwen patent in attempting to make up the deficiencies of Jiang as a reference against the claims. The Examiner contends that "Van Leeuwen's system explicitly calculates a remaining time period so that a determination can be made as to whether or not to attempt further information transfer." The Examiner further contends that "[i]t would have been obvious to one of ordinary skill in the art at the time of the applicant's invention to modify the system of Jiang by adding the ability to determine whether a remaining time period exists and execute an additional information transfer that can be completed within the remaining time period as provided by Van Leeuwen." As for motivation, the Examiner states that "[h]ere the combination satisfies the need for an improved mobile communications system which overcomes the problems of wasted time and bandwidth," citing "Van Leeuwen, column 3, line 59 through column 4, line 6." Elsewhere in the Office Action the Examiner relies on Van Leeuwen, "column 4, lines 40-43 and column 7, lines 20-49" and with respect to "said predicting means predicting the time period based on both of the following: data rate and file priority" the Examiner relies on Van Leeuwen "column 7, lines 48-57."

The Van Leeuwen reference relates to mobile client-based wireless communication system which uses geographic position information regarding a respective client relative to one or more communication dead zones. When a mobile client is approaching a dead zone, data communications can be delayed until the dead zone is traversed or given higher priority to expedite transmission completion before a dead zone entry. The position information is communicated to a base station and the information compared with the locations of respective dead zones. An estimated time before the mobile unit enters a dead zone is then communicated to that unit. The mobile unit uses this information to determine whether sufficient time remains before entering the dead zone to transfer one or more blocks of data.

Considering the specific passages to which the Examiner has referred, the passage bridging columns 3 and 4 merely provides that "[w]asted bandwidth may occur, if, for example, a transmitter tries to repeat a transmission when the receiver is totally

incapable of receiving the information" and that this "might occur, for example, if the receiver is in a vehicle and the vehicle is inside of a tunnel which is naturally shielded from radio transmissions." The rest of the passage relates to lack of reception due to "the relative location of the transmitter and receiver, i.e., relative to a dead zone."

As stated in a previous response, it is respectfully submitted that nothing in this passage concerns determining whether a remaining time period exists subsequent to a transferring means completing an information transfer within the time period and, if a remaining time period is determined to exist, the transferring means executing an additional information transfer that can be completed within the time period. All of the examples in this passage have to do with different problems from that addressed in the claims and the very general reference to wasted time and bandwidth is not a proper basis for combining the references given the very different teachings of the two references and the emphasis in Van Leeuwen on the problems caused by dead zones.

Similar remarks apply to the other passages in Van Leeuwen that have been cited. Lines 40-43 of column 4 describe avoiding data loss as a unit approaches a dead zone and granting priority to a particular unit as the unit approaches the dead zone. Lines 17-49 of column 17 refer to a specific claim, claim 2, and it is clear that the subject matter of claim 2 of the reference is different from that claimed here. For example, the rate of travel of a mobile unit is not the same thing as the claimed "data rate" and the scheduling step of the reference is clearly based on estimations and not with determining whether a remaining time period exists subsequent to the completion of an information transfer within the time period. Column 15, lines 52-55 of the reference refers to communications with multiple clients and states that "prioritization of transmissions based on the relative positions of each mobile client with respect to one or more dead zones uses bandwidth more efficiently." This is not a teaching of the subject matter being claimed.

With respect to claim 1, this claim further recites that the predicting means predicts "the time period based both of the following: data rate and file priority." Regarding this feature, the Examiner contends that "[a]lthough Jiang discusses data rate, he is not explicit as to utilizing a file priority" but that "Van Leeuwen explicitly states

the use of data rate and file priority in predicting time periods." First, it is not seen that either reference discloses the "data rate" feature, i.e., predicting the time period based on the rate at which data is transmitted. As is discussed in more detail below, this is not the same thing as estimating a time period (as in Van Leeuwen). Similar remarks relate to the "file priority" feature; while, as was indicated above and is also discussed in more detail below, Van Leeuwen makes some reference to prioritization, it is not seen that the reference discloses this specific feature. In addition, similar remarks also apply to claim 7 with respect to the "file size, data rate and user preference" feature and to claim 21.

Turning to the "Response to Arguments" section, it is again respectfully submitted that "estimating the time before a mobile unit enters a dead zone" and using "this information to determine whether sufficient time remains for entering the dead zone to transfer one or more blocks of data" is not the same thing as determining whether a remaining time period exists subsequently to completing a particular information transfer within the time period and then executing an additional information transfer if a remaining time period is determined to exist. It is respectfully submitted that Van Leeuwen does not specifically teach that a first information transfer has taken place prior to estimating the time remaining in the period.

Further, applicant respectfully disagrees with the contention that the teaching in Van Leeuwen "that the system includes priority procedures which take into account both bandwidth used in information transfer and urgency of the transmission" meets "the limitation at hand". It is respectfully submitted that "bandwidth" is simply not the same thing as data rate, and in this regard, in situation wherein a particular communication system places limitations on the available bandwidth, this does not mean that the data rate cannot be varied within this bandwidth. Further, "urgency" is not the same thing as assigning a file priority to each of the files in question. In this regard, "file priority" can take into consideration factors other than urgency, as explained in the application. It is noted that the "data rate" feature is included in each of claims 1, 7 and 21 and thus, that these claims distinguish over the references cited for at least this reason.

Turning to the rejections of independent claims 7, 13 and 21, the Pyhalammi reference is also relied on in these rejections. First, regarding claims 7 and 21, it is

clear that Pyhalammi likewise does not teach the "data rate" feature, and thus, again, these claims are patentable for at least this reason.

Considering the Pyhalammi reference in more detail, as discussed in previous responses, the Pyhalammi patent discloses a mobile content delivery system which is concerned with preventing the system "from managing present network load conditions while a message is being delivered or to be time delayed to suit the existing demands on a wireless network" (column 1, lines 38-45 cited by the Examiner). The reference provides for selection by a user of a class of delivery for the content and states that this class of delivery "can be selected by the user on a transaction basis, or subscription-based and pre-defined in a user profile".

The reference also refers to a "deliver NOW" delivery claims and a specified "time delay delivery class." (This is described in the last paragraph of column 1 to which the Examiner has also referred.) In lines 46-61 of column 6 to which the Examiner has also made reference, Pyhalammi discloses assessing "past and present cell capacity, current user location, content file size, and time remaining to deliver content" and that if the time window in question is not an appropriate one "to deliver the message content, the queue priority of the message is adjusted based on the absolute time remaining to deliver the message content while taking into account the time lapsed to reach the 'NO SEND' decision."

Assuming for the sake of argument, the proposed combination of Jiang, Van Leeuwen and Pyhalammi is a proper one, it is respectively submitted that claims 7, 13 and 21 patentably define over this combination. In this regard, claim 7 recites that the predicting means predicts the time period based on file size, data rate and user preference while claim 13 recites that the priority determination for prioritizing files is based on both file importance and file size. It is not seen that the subject matter of these claims is taught by the references relied on.

With respect to independent claim 21, this claim recites, *inter alia*, that information is transferred based at least in part on a priority of a first one of at least two users relative to the other, as determined by determining means from the personal profiles of the users in question, and that the personal profile of the users includes a

schedule of the users and that the priority determination is made based on data rate, file size and file importance. These features are not taught by the references and thus, it is respectfully submitted that claim 21 defines over the references cited for the reasons discussed above, as well as additional reasons.

In the "Response to Arguments" section, the Examiner argues that "Col. 1, lines 52-67, shows the ability in Pyhalammi's system for the user to select certain features of the information transfer meaning the user has a preference as to how and when information is transferred". The Examiner also states that "[u]ser profiles are maintained" and that the "other previous line citations to Pyhalammi discuss in more detail the use of user profiles to provide content to the users at the most appropriate times and in the most appropriate ways."

In response, it is first noted that with respect to claim 7, there is no teaching in any of the references of using all three of the factors recited in claim 7 and, again, no teaching of the use of data rate as one of these factors. Regarding claim 13, there is no teaching in the references of a priority determination for prioritizing files based both on file importance and file size. Finally, regarding claim 21, while Pyhalammi may discuss the use of user profiles to provide content to the users, there is no disclosure of means for transferring information based at least in part on the priority of the first one of multiple users relative to other users, as determined by determining means, based on the personal profiles of the various users. In the reference, it is the user that makes determination while in the system of claim 21 it is determining means of the system that makes a determination based on personal profiles. Further, there is simply no teaching in any of the references of making a priority determination based on both file size and file importance and certainly no teaching of making a determination based on all three of data rate, file size and file importance. It is respectfully submitted that the discussion in the "Response to Arguments" section regarding the Pyhalammi reference does not address these specific issues, but rather merely describes general teachings of Pyhalammi with respect to user preference.

Regarding the rejection of claims 15 and 16, it is respectfully submitted that these claims are patentable for at least the reasons set forth above in support of the

patentability of claim 13 which is parent thereto. Further, the need to cite four references in rejecting these claims is further evidence of the non-obviousness of these claims.

Allowance of the application in its present form is respectfully solicited.

END REMARKS